IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16629 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KALUMIYA @ KAUSHIK @ VAJIRALI AKBARALI @ KAMUMIYA MALEK

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 16629 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MRS HB PUNANI, AGP for Respondents

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 02/03/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Ahmedabad City, on 6th October, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 6th October, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at subjective satisfaction. Firstly, the detaining authority relied upon seven criminal offences registered against the petitioner for robberies and thefts and secondly two incamera statements recorded by the sponsoring authority on 29th September, 2004 and verified by the detaining authority on 4th October, 2004.

3. First crime was registered against the petitioner before Navarangpura Police Station on 12th February, 2003 under Section 392 and 114 of the Indian Penal Code wherein it was alleged that the petitioner was involved in robbery of one gold chain worth Rs.12,000-00. Second crime was registered against the petitioner before Sabarmati Police Station on 3rd May, 2003, under Section 392 and 114 of the Indian Penal Code, wherein it was alleged that the petitioner was involved in robbery of one gold chain worth of Rs.7,000-00. Third crime was registered against the petitioner before Shahibaug Police Station on 28th January, 2004, under Section 392 and 114 of the Indian Penal Code wherein it was alleged that the petitioner was involved in robbery of gold chain worth of Rs.10,000-00. Fourth crime was registered against the petitioner before Shahibaug Police Station on 6th April, 2004 under Section 392, 356 and 114 of the Indian Penal Code, wherein the petitioner was found committing robbery of one gold chain worth of Rs.7,500-00. Fifth crime was registered against the petitioner before Navrangpura Police Station on 24th May, 2004 under Section 379, 356 and 114 of the Indian Penal Code, wherein the petitioner was found committing the offence in respect of gold chain worth Rs.10,000-00. Sixth crime was also registered against the petitioner before Naranpura Police Station on 27th May, 2004 under Section 379, 356 and 114 of the Indian Penal Code, wherein as per the allegation the petitioner was involved in theft of one gold chain worth Rs.7,500-00. Seventh and last crime was also registered against the petitioner before Naranpura Police Station on 26th July, 2004 under Section 379, 356 and 114 of the Indian Penal Code, wherein also it was alleged that the petitioner was involved in theft of one gold chain worth

of Rs.9,000-00. The detaining authority took into consideration thoroughly and exhaustively the investigation papers in all seven cases and came to the conclusion that the petitioner was habitual offender of committing the offences of robberies and thefts.

4. Secondly, the detaining authority relied upon two incamera statements of the witnesses. The first witness referred to an incident occurred on 12th June, 2004. At about 5.00 p.m., the petitioner and his accomplices approached the witness and on suspicion that the witness was providing information to the police about the illegal activities of the petitioner, the witness was beaten. The shouts for help by the witness attracted the crowd, but the witness was threatened to kill by a knife and the crowd was also threatened, so the crowd was disbursed. The public traffic was disturbed and the atmosphere of terror and fear was created.

5. The second witness referred to an incident occurred on 23rd June, 2004. When at about 13.00 hours, the witness was at his business place and was approached by the petitioner and his accomplices. The petitioner offered one gold chain to the witness and insisted that the witness should purchase the said gold chain. The witness was aware that the petitioner was involved in illegal activities of committing theft and, therefore, he refused the offer of the petitioner. On refusal of the witness, the petitioner was excited and started beating the witness. The shouts for help by the witness attracted a crowd, but on noticing the crowd being gathered, the witness was threatened to kill by the petitioner and, thereafter, the crowd was also threatened by the petitioner and on account of fear of the petitioner, the people started running helter-skelter, so the public traffic was disturbed. The atmosphere of terror and fear was created in the locality.

6. From the above materials, the detaining authority concluded that the petitioner was engaged in illegal activities of committing theft and robbery and was a habitual offender. The detaining authority concluded that the petitioner was a headstrong and ferocious person and was keeping deadly weapon with him. It was also urged that the petitioner formed a gang of headstrong person and in executing his illegal activities, he used to beat innocent citizen. On account of the activities of the petitioner, the fear and terror was spread among the locality. The detaining authority concluded that the activities of the petitioner under were prejudicial to the maintenance of the public order and the said

activities of the petitioner were required to be prevented forthwith. After considering other alternative remedies, available against the petitioner the general law, the detaining authority concluded that there was no other alternative except to detain the petitioner under the PASA ACt. The detaining authority, therefore, passed an order of detention of the petitioner as aforesaid, which is under challenged in this petition.

7. Learned advocate Mr.M.R.Prajapati, for the petitioner and learned AGP Mrs.H.B.Punani for the respondents were heard at length. The affidavit-in-reply as filed by the detaining authority and placed on record by the learned AGP is taken into consideration.

8. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the detaining authority applied mind properly to the material placed before him in arriving at the subjective satisfaction.

9. From the grounds of detention as placed on record, it becomes clear that the petitioner was in judicial custody, when the order under challenged came to be executed against the petitioner, in all seven crimes registered against him. In this respect, the detaining authority reached to the subjective satisfaction that though the petitioner was in judicial custody at the time of execution of the order, but he was likely to file applications for bail in the above said seven crimes before the Court and he was likely to be released in all cases on bail. The detaining authority also reached to the subjective satisfaction that on so releasing the petitioner on bail, he was likely to continue his illegal activities.

10. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail, inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail was not held a cogent material and the detention order based on such material was liable to be quashed.

11. In the present case, after carefully going through the grounds of detention and the papers served upon the detenu, it becomes clear that there was no material at all placed before the detaining authority to infer that the petitioner was likely to move an applications for bail in all the cases filed against him. Likewise, there was no material at all placed before the detaining authority to infer that on so moving such bail application by the petitioner, he was likely to be released on bail by the Court. Thus, the subjective satisfaction arrived at by the detaining authority that the petitioner was like to be released on bail and that he was likely to continue his illegal activities is based on no material at all. The subjective satisfaction arrived at by the detaining authority, therefore, is not valid, legal and in accordance with law. The order under challenged is required to be quashed and set aside on this ground alone.

12. In the result, the petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 6th October, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu KALUMIYA @ KAUSHIK VAJIRALI AKBARALI @ KAMUMIYA MALEK [KAZI] is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)